

(5) Operating a system for accounting for costs incurred under the MSPP contract, which includes segregating and pricing MSP medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner;

(6) Maintaining accurate accounting reports of costs incurred in the administration of the MSPP contract;

(7) Applying performance standards for assuring contract quality as outlined at § 800.402; and

(8) Establishing and maintaining a system of internal controls that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses comply with legal, regulatory, and contractual guidelines;

(ii) MSP funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

(d) *Poor business practices.* For purposes of paragraph (b)(6) of this section, poor business practices include, but are not limited to, the following:

(1) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(2) Repeatedly or knowingly providing false or misleading information in the rate setting process;

(3) Failing to comply with OPM instructions and directives;

(4) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract;

(5) Failing to assure that the MSP properly pays or denies claims, or, if applicable, provides medical services that are inconsistent with standards of good medical practice; and

(6) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual cov-

ered under the MSPP. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services.

(e) *Performance escrow account.* OPM may require MSPP issuers to pay an assessment into an escrow account to ensure contract compliance and benefit MSP enrollees.

§ 800.402 Contract quality assurance.

(a) *General.* This section prescribes general policies and procedures to ensure that services acquired under MSPP contracts conform to the contract's quality requirements.

(b) *Internal controls.* OPM will periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. OPM's reviews do not diminish the contractor's obligation to implement and maintain an effective and efficient system to apply the internal controls.

(c) *Performance standards.* (1) OPM will issue specific performance standards for MSPP contracts and will inform MSPP issuers of the applicable performance standards prior to negotiations for the contract year. OPM may benchmark its standards against standards generally accepted in the insurance industry. OPM may authorize nationally recognized standards to be used to fulfill this requirement.

(2) MSPP issuers must comply with the performance standards issued under this section.

§ 800.403 Fraud and abuse.

(a) *Program required.* An MSPP issuer must conduct a program to assess its vulnerability to fraud and abuse as well as to address such vulnerabilities.

(b) *Fraud detection system.* An MSPP issuer must operate a system designed to detect and eliminate fraud and abuse by employees and subcontractors

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of the MSPP issuer, by providers furnishing goods or services to MSP enrollees, and by MSP enrollees.

(c) *Submission of information.* An MSPP issuer must provide to OPM such information or assistance as may be necessary for the agency to carry out the duties and responsibilities, including those of the Office of Inspector General as specified in sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. App.). An MSPP issuer must provide any requested information in the form, manner, and timeline prescribed by OPM.

§ 800.404 Compliance actions.

(a) *Causes for OPM compliance actions.* The following constitute cause for OPM to impose a compliance action described in paragraph (b) of this section against an MSPP issuer:

(1) Failure by the MSPP issuer to meet the requirements set forth in § 800.401(a) and (b);

(2) An MSPP issuer's sustained failure to perform the MSPP contract in accordance with prudent business practices, as described in § 800.401(c);

(3) A pattern of poor conduct or evidence of poor business practices such as those described in § 800.401(d); or

(4) Such other violations of law or regulation as OPM may determine.

(b) *Compliance actions.* (1) OPM may impose a compliance action against an MSPP issuer at any time during the contract term if it determines that the MSPP issuer is not in compliance with applicable law, this part, or the terms of its contract with OPM.

(2) Compliance actions may include, but are not limited to:

(i) Establishment and implementation of a corrective action plan;

(ii) Imposition of intermediate sanctions, such as suspensions of marketing;

(iii) Performance incentives;

(iv) Reduction of service area or areas;

(v) Withdrawal of the certification of the MSPP issuer to offer the MSP on one or more Exchanges;

(vi) Nonrenewal of the MSPP contract; and

(vii) Withdrawal of approval or termination of the MSPP contract.

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(c) *Notice of compliance action.* (1) OPM must notify an MSPP issuer in writing of a compliance action under this section. Such notice must indicate the specific compliance action undertaken and the reason for the compliance action.

(2) For compliance actions listed in paragraphs (b)(2)(v) through (b)(2)(vii) of this section, such notice must include a statement that the MSPP issuer is entitled to request a reconsideration of OPM's determination to impose a compliance action pursuant to § 800.405.

(3) Upon imposition of a compliance action listed in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section, OPM must notify the State Insurance Commissioner(s) and Exchange officials in the State or States in which the compliance action is effective.

(d) *Notice to enrollees.* If OPM terminates an MSPP issuer's MSPP contract with OPM, or OPM withdraws the MSPP issuer's certification to offer the MSP on an Exchange, the MSPP issuer must comply with any requirements regarding the termination of a plan that are applicable to a QHP offered on an Exchange on which the MSP was offered, including a requirement to provide advance written notice of termination to enrollees. If an Exchange does not have requirements about advance written notice of termination to enrollees, the MSPP issuer must inform current MSP enrollees in writing of the nonrenewal of the MSP no later than 90 days prior to termination of coverage, unless OPM determines that good cause justifies less than 90 days' notice.

(e) *Definition.* As used in this subpart, "termination" means a decision by OPM to cancel an MSPP contract prior to the end of its contract term. The term includes OPM's withdrawal of approval of an MSPP contract.

§ 800.405 Reconsideration of compliance actions.

(a) *Right to request reconsideration.* An MSPP issuer may request that OPM reconsider a determination to impose one of the following compliance actions:

(1) Withdrawal of the certification of the MSPP issuer to offer the MSP on one or more Exchanges;